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ELECTRONIC FRONTIER FOUNDATION
CINDY COHN (145997)
cindy@eff.org
LEE TIEN (148216)
tien@eff.org
KURT OPSAHL (191303)
kurt@eff.org
KEVIN S. BANKSTON (217026)
bankston@eff.org
CORYNNE MCSHERRY (221504)
corynne@eff.org
JAMES S. TYRE (083117)
jstyre@eff.org
454 Shotwell Street
San Francisco, CA 94110
Telephone: 415/436-9333
415/436-9993 (fax)

Attorneys for Plaintiffs

[Additional counsel appear on signature page.]

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

TASH HEPTING, GREGORY HICKS, CAROLYN JEWEL and ERIK KNUTZEN, on Behalf of Themselves and All Others Similarly Situated, Plaintiffs, v. AT&T CORP., et al., Defendants.	No. C-06-0672-VRW **CLASS ACTION** **PLAINTIFFS' NOTICE OF MOTION AND MOTION TO FILE SUPPLEMENTARY MATERIAL** Courtroom: 6, 17th Floor Judge: The Hon. Vaughn R. Walker, Chief Judge

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PLEASE TAKE NOTICE that plaintiffs Tash Hepting, Gregory Hicks, Carolyn Jewel and Erik Knutzen will and hereby do move the Court, pursuant to Civil Local Rule 7-11, for an order allowing Plaintiffs to bring to the Court's attention relevant, supplementary material published after the June 23, 2006 hearing in this matter.

Plaintiffs seek this administrative order based on this Notice of Motion and Motion, the Memorandum of Points and Authorities below, and the Supplementary Material submitted herewith.

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs seek to submit an internet article published after the June 23, 2006 hearing, titled "Lawmakers: NSA Database Incomplete," for the Court's consideration. Susan Page et al., *Lawmakers: NSA Database Incomplete*, USA Today, June 30, 2006, http://www.usatoday.com/news/washington/2006-06-30-nsa_x.htm. This article contains important information relating to the Government's motion to dismiss, argued at the June 23 hearing, and would have been cited by the Plaintiffs had it been available before the hearing date.

I. ARGUMENT

At the June 23, 2006 hearing, the government argued, in support of its motion to dismiss on the basis of the state secrets privilege, that Plaintiffs' claims of warrantless, illegal wiretapping had no support outside of hearsay and other inadmissible or untrustworthy evidence. The government argued:

> The President has confirmed that the government seeks to intercept communications with one end abroad where one party is associated with al Qaeda. With respect to all of the other allegations in plaintiffs' complaint, there is a raft of speculation out there, much of it contradictory, much of it seemingly confused, all of it sourced either to anonymous, unnamed people who claim to be insiders or named people who say that they're outside experts and acknowledge that they're speculating based upon their expertise.
> That combination of anonymous assertions and speculations certainly gives rises to suspicions and may lead lots of people to assume various things. It doesn't establish reliable facts.

Mot. to Dismiss Hr'g Tr. 47: 7-19, June 23, 2006.

Plaintiffs respectfully submit that the article submitted herewith rebuts these assertions by the government, and provides additional support for certain facts plead upon information and belief in the First Amended Complaint. Specifically, the article establishes that "[n]ineteen lawmakers who had been briefed on the program verified that the NSA has built a database that includes records of Americans' domestic phone calls." *Lawmakers: NSA Database Incomplete*, USA Today, June 30, 2006, http://www.usatoday.com/news/washington/2006-06-30-nsa_x.htm. The article also states that "[f]ive members of the intelligence committees said they were told by senior intelligence officials that AT&T participated in the NSA domestic calls program." *Id.*

Good cause exists to allow Plaintiffs to supplement the record with this information because it did not exist prior to the hearing, and it is not cumulative of the information before the Court. The article relies on members of Congress who have been briefed on the activities of the NSA and AT&T. Plaintiffs therefore seek to add this article to the record for the Court's consideration in connection with the government's motion to dismiss.

II. CONCLUSION

For the foregoing reasons, Plaintiffs request leave to file the referenced internet article with the Court for its consideration.

DATED: July 6, 2006

Respectfully submitted,

HELLER EHRMAN LLP

By /s/Elena M. DiMuzio

ROBERT D. FRAM (SBN 126750)
MICHAEL M. MARKMAN (SBN 191388)
ETHAN C. GLASS (SBN 216159)
SAMUEL F. ERNST (SBN 223963)
NATHAN E. SHAFROTH (SBN 232505)
ELENA M. DIMUZIO (SBN 239953)
333 Bush Street
San Francisco, CA 94104
Telephone: 415/772-6000
415-772-6268 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
REED R. KATHREIN
JEFF D. FRIEDMAN
SHANA E. SCARLETT
MARIA V. MORRIS
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

TRABER & VOORHEES
BERT VOORHEES (137623)
bv@tvlegal.com
THERESA M. TRABER (116305)
tmt@tvlegal.com
128 North Fair Oaks Avenue, Suite 204
Pasadena, CA 91103
Telephone: 626/585-9611
626/ 577-7079 (fax)

LAW OFFICE OF RICHARD R. WIEBE
RICHARD R. WIEBE
425 California Street, Suite 2025
San Francisco, CA 94104
Telephone: 415/433-3200
415/433-6382 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
ERIC ALAN ISAACSON
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the following non-CM/ECF participants:

David W. Carpenter
Sidley Austin Brown & Wood LLP
Bank One Plaza
10 South Dearborn Street
Chicago, IL 60600

David L. Lawson
Sidley Austin Brown & Wood
172 Eye Street, N.W.
Washington, DC 20006

By /s/

Elena M. DiMuzio (SBN 239953)
Heller Ehrman LLP
333 Bush Street
San Francisco, CA 94104
Telephone: (415) 772-6293
Facsimile: (415) 772-1753
elena.dimuzio@hellerehrman.com